

Decision _____

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking to Examine the
Commission's Future Energy Efficiency Policies,
Administration and Programs.

Rulemaking 01-08-028
(Filed August 23, 2001)

**SECOND INTERIM OPINION SELECTING 2002-03
LOCAL ENERGY EFFICIENCY PROGRAMS**

I. Introduction

In this interim decision, we award \$15,338,979 in local energy efficiency funding for 2002-03. In some cases, we increase the funding awards for certain programs selected in Decision (D.) 02-05-046. In others, we fund programs not reflected in that decision. These programs offer excellent energy efficiency services and assist us in creating a balanced energy efficiency portfolio. The funded programs are as follows:

Program Administrator	Ref. No.	Program Title	Approved Budget¹	IOU Contract Administrator	Remarks
PG&E Service					
California State University Fresno	230ABCD-02	Agriculture Pumping Efficiency Program	\$1,936,174	PG&E	Additional funding ²
Global Energy Services	278BC-02	Chinese Language Efficiency Outreach	\$345,666	SCE	Additional funding

¹ Excludes IOU administrative fee.

² Funding in addition to budgets approved in D.02-05-046.

State & Consumer Services Agency	177-02	Proposal for a Local K-12 Schools Energy Efficiency Program	\$1,936,173	PG&E	Additional funding
Association of Bay Area Governments	105-02	Energy Management Assistance for Local Governments	\$2,851,614	PG&E	New program
City of Berkeley	168-02	Neighborhood Energy Awareness and Education Service	\$488,938	PG&E	New program
Total PG&E			\$7,558,565		
SCE Service Territory					
County of Los Angeles	156-02	The County of Los Angeles Internal Services Division Energy Efficiency Program	\$2,077,711	SCE	Additional funding
Flintridge Consulting	276-02	Energy Surveys: Southern California Mainstreet	\$563,281	SCE	New program
Vacom Technologies	217AB-02	Energy Efficiency Program for Small and Medium Size Food Stores and Refrigerated Storages	\$1,002,744	SDG&E	New program
Total SCE			\$3,643,736		
SDG&E Service Territory					
Vacom Technologies	217AB-02	Energy Efficiency Program for Small and Medium Size Food Stores and Refrigerated Storages	\$612,869	SDG&E	New program
Total SDG&E			\$612,869		
SoCalGas Service Territory					
ADM Associates	119B-02	Upstream High Efficiency Gas Water Heater Program	\$1,337,151	PG&E	Additional funding
CHEERS	234B-02	Building Department and Small Builder Title 24 Standards Training	\$460,653	PG&E	Additional funding
California Urban Water Conservation Council	162ABC-02	Pre-Rinse Spray Head Installation Program for the Food Service Industry	\$583,148	SCG	Additional funding
Energx Controls, Inc.	208-02	Local Small Commercial Energy Efficiency and Market Transformation Program	\$1,142,857	SCG	New program
Total SoCalGas			\$3,523,809		
TOTAL			\$15,338,979		

II. Background

In D.02-05-046, we awarded \$102,030,037 in local program funding for 2002-03.³ The remaining available funding was \$15,757,911. While the draft decision had approved the full \$125 million in available local energy efficiency funding, we stated in D.02-05-046 that

As to certain programs recommended in the draft decision, we will hold off on making a decision until we have time further to consider them. We have backed those programs out of the funding tables so that all other programs may go forward without delay. We will address the remaining \$15,757,911 million in programs after this decision issues. (D.02-05-046, *mimeo.*, at 38.)

We have determined that the programs awarded funding here offer comparably qualified services to those recommended in the draft decision. The programs not awarded funding here fall into two categories: one program is sponsored by a subsidiary of the Enron Corporation. The other programs are sponsored by out-of-state entities. We discuss each of these categories below.

III. Discussion

A. Funded Programs

The programs we fund offer the following energy efficiency services: energy management services for local governments and school districts, energy efficiency education and outreach, energy management services for the food service industry and small business in Southern California, new construction

³ We also set aside \$4,462,052 to cover the maximum amount of administrative costs the large Investor Owned Utilities could receive for administering the third-party program contracts, in addition to \$2,750,000 in “bridge funding” given to the IOUs in D.02-03-056. (See D.02-05-046, *mimeo.*, at 8.)

standards training for building departments and small builders and upstream residential high-efficiency gas water heater incentives. They provide needed energy efficiency services that balance the remaining portfolio of selected programs, and meet the program criteria in D.01-11-066. In some cases, we reinstate funding for programs whose budgets we cut in the initial selection process. This additional funding will allow the affected programs to serve more customers and increase the number of measures installed. We award \$15,338,979 for these programs, and set aside the rest of the available local energy efficiency funding (*i.e.*, \$418,932) to cover the maximum IOU administrative costs that may result from the inclusion of the foregoing programs in the 2002-03 program mix.⁴

Attachment 1 to this decision presents additional information on the new programs selected for each IOU service area. We provide the Energy Division's description of each selected program (including those awarded additional funding), required program modifications, budget and other information in Attachment 3 hereto.⁵ Each program approved in this decision shall be bound by the terms and conditions in D.02-05-046, with the exception of certain due dates set forth therein, revisions of which are set forth in Attachment 2 to this decision.

We summarize in Attachment 4 the selected local program mix by delivery structure, geography and targeted rate-class for all the local energy efficiency programs we fund in D.02-05-046 and in this decision.

⁴ See D.02-05-046, *mimeo.*, at 35-36.

⁵ The respective program budgets shown in Attachment 3 do not include the IOU administrative fees.

B. Enron Subsidiary

We decline to fund the proposal of the Efficiency Services Group, recommended in the draft decision, on the ground that it is offered by a subsidiary of Portland General Electric, which is in turn a subsidiary of the Enron Corporation. We take official notice of the fact that Enron is in bankruptcy and currently is under investigation for activities that contributed to California's recent energy crisis. We believe it is inappropriate to fund this corporate entity under these circumstances. Enron's precarious financial situation raises concerns as to whether the program would fail midstream, hurting California electricity consumers and the Commission's overall energy efficiency efforts. There is too much uncertainty surrounding Enron for us to be able to select its program given the quality of the other programs also seeking funding.

The criteria in D.01-11-066 make room for such disallowances. Our first criterion states that "[t]he most important goal of any Commission energy efficiency program is to create permanent and verifiable energy savings over the life-cycle of the relevant energy efficiency measures." A company faced with the financial and legal risks Enron poses may be unable to create such permanent change. It is not at all clear what the obligations of Portland General Electric will be to help satisfy Enron's debts. Given the financial precariousness of Enron and the likelihood Portland General Electric will be called to account at least in part for Enron's debt, we simply cannot approve of sending additional California ratepayer money to these entities.

C. Out-of-State Programs

Certain programs included in the draft decision would provide funding for programs run by companies located out-of-state. We believe such programs offer less promise of satisfying the energy efficiency program criteria developed

in D.01-11-066. Moreover, in light of California's current poor economy, of which we take official notice, we believe the similarly qualified in-state programs we have selected in place of those in the draft decision are more appropriate recipients of California ratepayer funding. The programs not funded are contained in Attachment 5 to this decision.

In our view, the funded programs more closely satisfy the criterion in D.01-11-66 that requires that energy efficiency programs take advantage of synergies or coordination of other existing programs, including those run by other state agencies, private entities, municipal utilities, or the federal government. We believe programs run from within the state are in a better position than out-of-state run programs to synergize with the foregoing entities.

In addition, we believe that in-state programs offer greater promise of meeting the policy preference set forth in D.02-05-046 that programs provide a local presence and leave lasting change or infrastructure at the local level. (*Id.* at 12.) Local entities are in a better position to effect local change.

In addition, we believe we retain discretion to favor California-based programs where, as here, programs are aimed directly at residential and small businesses housed in hard-to-reach communities. Programs with a local presence and the knowledge of local needs are best equipped, we believe, to deliver services that actually address these needs. Indeed, in D.01-11-066, we explained that local programs should utilize local relationships and networks. (*Id.* at 17.) We also believe in-state and community-based programs can more effectively engage in "training/capability-building and outreach efforts in local communities across the state, and "build infrastructure and strengthen institutions in order to expand the capability for energy efficiency delivery." (*Id.*)

Indeed, we encouraged reliance on community-based organizations for program delivery. (*Id.* at 17-18.)

D. Energx Program

In D.02-05-046, we held back for further consideration funding the draft decision tentatively awarded to Energx Controls, Inc. (Energx) on the ground of concerns raised in the draft decision about an Energx state tax lien. Since submitting its proposal, however, Energx submitted evidence sufficient to establish that it has since cleared the lien, which was based on a minor accounting dispute. Therefore, we fund the Energx proposal.

IV. Conclusion

We award 2002-03 local energy efficiency funding to the well-qualified programs listed herein. We decline to fund the Enron/Portland General Electric/Efficiency program and programs run by out-of-state entities for the reasons set forth above.

V. Comments on Draft Decision

Pursuant to Rule 77.7(f)(9), comments on the draft decision and alternate draft decision may be reduced. Here, reduction is appropriate due to the need to put local energy efficiency programs in place in time for Summer 2002. Comments were due May 31, 2002. No reply comments were allowed.

A. Out-of-State Providers

The out-of-state firms denied funding make several arguments. First, they argue that excluding out-of-state firms is an unconstitutional violation of the U.S. Constitution's Commerce Clause. We disagree. When a state acts as a market participant, rather than a regulator, it is free to favor in-state over out-of-state interests without violating the Commerce Clause. (*See White v. Massachusetts Council of Constr. Employers, Inc.*, 460 U.S. 204, 207-08 (1983).) In

White, for example, the Supreme Court upheld an executive order that required all construction projects financed by city funds to use a work force at least half of whom were city residents. In response to the argument that the city was not just participating in the market, but regulating contracts between third parties, the Court held that on the facts presented the city was a market-participant: “[W]e think the Commerce Clause does not require the city to stop at the boundary of formal privity of contract. In this case, the Mayor's executive order covers a discrete, identifiable class of economic activity in which the city is a major participant.” (460 U.S. at 211 n.7.)

The out-of-state firms also allege the Commission changed the rules governing their proposals after the game started. Again, we disagree. Our decision denying the out-of-state firms funding is based explicitly on the following factors in D.01-11-066, the original decision setting the rules the Commission would use to select programs:

- The ability of energy efficiency programs to take advantage of synergies or coordination of other existing programs, including those run by other state agencies, private entities, municipal utilities, or the federal government;
- The ability of programs to utilize local relationships and networks; and
- The extent to which the proponent can engage in “training/capability-building and outreach efforts in local communities across the state, and “build infrastructure and strengthen institutions in order to expand the capability for energy efficiency delivery.”

In view of the large number of qualified proposals, the Commission was within its rights to decide close cases based on factors explicitly listed in

D.01-11-066. The fact that we did not list all of the ways in which proposers might meet – or fail to meet – those criteria does not preclude us from using the criteria to make our final decision. Thus, even though we did not explicitly state that providers without an in-state presence would present a weaker case for funding than would providers with such a presence, as long as the D.01-11-066 factors are at issue, we have the discretion to make such distinctions.

Finally, commenters claim we used the wrong means of separating the providers eligible and ineligible for funding, because other programs selected for funding are headquartered out-of-state. While there might have been different ways to separate such programs, our decision to exclude programs with no in-state address was reasonably designed to reach the programs least likely to be able to meet the D.01-11-066 criteria.

B. Enron Subsidiary

Two parties dispute the decision to deny the Enron subsidiary energy efficiency funding. Both are associated with the program. They acknowledge Enron's woes, but claim there are adequate safeguards and sufficient distance between Portland General Electric, Efficiency Services Group and Enron to mitigate the risk of program failure. As we said in the draft decision, there is far too much uncertainty for us to be able to conclude that the Efficiency Services Group program will be able to serve California ratepayers through 2003. It makes no sense for us to fund a program posing so much uncertainty when there are so many other comparably qualified and necessary programs seeking the same funding.

Moreover, the Enron investigation does include direct allegations against Portland General Electric. We take official notice of an Order to Show Cause issued by the Federal Energy Regulatory Commission (FERC) on June 4,

2002.⁶ It orders Portland General Electric (among others), to show cause why its authority to charge market-based rates should not be revoked retroactively to February 13, 2002. The order is based on Portland's actions in connection with the investigation noted in footnote 1 of Portland's comments. It is unnecessary for us to find whether the FERC's allegations are true. The mere existence of the Order to Show Cause creates further uncertainty for this Commission as to the financial viability of Portland General Electric.

Moreover, Portland concedes that Enron has some access to Portland cash "through dividends or otherwise," even though such access is "limited." Further, Portland states that it can make cash distributions to Enron as long as the distributions do not cause Portland's "equity capital" to fall below 48% of total Portland General Electric capitalization. With the approval of its Oregon state regulator, Portland General Electric can send additional "equity capital" to Enron. Finally, all Portland can say about the possibility it will enter bankruptcy with Enron is that it "believes that substantive consolidation of Portland General Electric in the bankruptcy of Enron is unlikely." Once again, we are not here to predict the future with certainty. It is sufficient that there is enough uncertainty surrounding Enron and Portland General Electric to allow the Commission to choose another comparably qualified provider whose business affairs do not raise the same concerns.

⁶ The Order is available at <http://www.ferc.gov/electric/bulkpower/pa02-2/showcause-06-04-02.pdf>.

C. Other Comments

Other commenters claim our chosen energy efficiency portfolio does not provide adequate services to various constituents – for example, residential new construction programs. While we agree that the residential sector is especially hard to reach, we cannot justify granting funding to proposals that do not meet our criteria. We relied on the Commission’s Energy Division to select qualified proposals, and if the proposals for hard-to-reach areas and customers were not qualified, they were not selected.

Edison claims we did not allocate adequate funding to cover the IOUs’ administrative expenses associated with administering the programs. We disagree. We have set aside \$4,880,984 for potential IOU administrative fees, which includes \$4,462,052 approved in D.02-05-046 and \$418,932 approved here. The total amount reserved for IOU administrative fees represents approximately 4.7% of the total funds approved for third-party local programs.

Other proposers continue to seek funds – or increased funding – for their programs. It is too late for such changes, and we reject these arguments.

We have considered and rejected all other comments submitted.

Findings of Fact

1. The programs funded herein offer comparably qualified services to those recommended in the draft decision.
2. The funded programs offer needed energy efficiency services not covered by the remaining portfolio of programs selected in D.02-05-046.
3. Each funded program meets the program criteria set forth in D.01-11-066.
4. We take official notice of the fact that Enron Corporation is in bankruptcy and currently is under investigation for activities that contributed to California’s recent energy crisis.

5. Efficiency Services Group is a subsidiary of Portland General Electric, which is an Enron subsidiary.

6. The sponsors of proposals submitted by the Alliance to Save Energy, EnSave Energy Performance, Inc., the Geothermal Heat Pump Consortium, Portland Energy Conservation, Inc., SBW Consulting, Inc., and SESCO, Inc. are located outside of the state of California.

7. We take official notice of the current poor economy in the State of California.

8. Energen no longer has an outstanding California state tax lien.

9. We take official notice of an Order to Show Cause issued by the FERC on June 4, 2002, available at <http://www.ferc.gov/electric/bulkpower/pa02-2/showcause-06-04-02.pdf>.

10. Enron has some access to Portland cash “through dividends or otherwise,” even though such access is “limited.”

11. Portland General Electric can make cash distributions to Enron as long as they do not allow Portland’s “equity capital” to fall below 48% of total Portland General Electric capitalization. With the approval of its Oregon state regulator, Portland General Electric can send additional “equity capital” to Enron.

12. Portland General Electric can only state that it “believes that substantive consolidation of Portland General Electric in the bankruptcy of Enron is unlikely.”

Conclusions of Law

1. The financial precariousness of Enron renders the Efficiency Services Group program ineligible for program funding. The program may be unable to meet the first criterion set forth in D.01-11-066: “[t]he most important goal of any Commission energy efficiency program is to create permanent and verifiable

energy savings over the life-cycle of the relevant energy efficiency measures.”

There is too much uncertainty surrounding Enron for us to be able to select its program given the quality of the other programs also seeking funding.

2. In-state programs more closely satisfy the criterion in D.01-11-66 that require that energy efficiency programs take advantage of synergies or coordination of other existing programs, including those run by other state agencies, private entities, municipal utilities, or the federal government than programs headquartered out-of-state.

3. In-state programs offer greater promise than out-of-state programs of meeting the policy preference set forth in D.02-05-046 that programs provide a local presence and leave lasting change or infrastructure at the local level.

4. In-state and community-based programs can more effectively engage in training/capability-building and outreach efforts in local communities across the state, and build infrastructure and strengthen institutions in order to expand the capability for energy efficiency delivery than out-of-state programs.

5. The Commerce Clause is not violated if the state acts as a market participant, which in turn does not require the state have a contract with the party alleging the violation. The Commission in this case is acting as a market participant.

SECOND INTERIM ORDER**IT IS ORDERED** that:

1. We award the remaining 2002-03 local energy efficiency funding to the following programs:

Program Administrator	Program Title	Approved Budget
<i>New Programs:</i>		
Association of Bay Area Governments	Energy Management Assistance for Local Governments	\$2,851,614
City of Berkeley	Neighborhood Energy Awareness and Education Service	\$488,938
Flintridge Consulting	Energy Surveys: Southern California Mainstreet	\$563,281
Vacom Technologies	Energy Efficiency Program for Small and Medium Size Food Stores and Refrigerated Storages	\$1,615,613
Energx Controls, Inc.	Local Small Commercial Energy Efficiency and Market Transformation Program	\$1,142,857
<i>Additional Funding:</i>		
California State University Fresno	Agriculture Pumping Efficiency Program	\$1,936,174
Global Energy Services	Chinese Language Efficiency Outreach	\$345,666
State & Consumer Services Agency	Proposal for a Local K-12 Schools Energy Efficiency Program	\$1,936,173
County of Los Angeles	The County of Los Angeles Internal Services Division Energy Efficiency Program	\$2,077,711
ADM Associates	Upstream High Efficiency Gas Water Heater Program	\$1,337,151
CHEERS	Building Department and Small Builder Title 24 Standards Training	\$460,653
California Urban Water Conservation Council	Pre-Rinse Spray Head Installation Program for the Food Service Industry	\$583,148
TOTAL		\$15,338,979

2. We set aside an additional \$418,932 to cover IOU administrative costs that may result from the inclusion of the foregoing programs.

3. Each selected program shall be bound by the terms and conditions in D.02-05-046, with the exception of certain due dates set forth therein, revisions of which are set forth in Attachment 2 to this decision.

This order is effective today.

Dated _____, at San Francisco, California.

ATTACHMENT 1
SELECTED LOCAL PROGRAMS AND ENERGY REDUCTION TARGETS¹

Energy Division Proposal Reference Number	Proposal Sponsor	Program Title	Approved Budget	Demand Reduction Targets (kW)	Energy Reduction Targets (kWh)	Energy Reduction Targets (ths)
276-02	Flintridge Consulting	Energy Surveys: Southern California Mainstreet	\$563,281	Information Only Program		
217AB-02	Vacom Technologies	Energy Efficiency Program for Small and Medium Size Food Stores and Refrigerated Storages	\$1,615,613	1,305	9,525,000	
105-02	Association of Bay Area Governments	Energy Management Assistance for Local Governments	\$2,851,614	1,728	192,884,063	4,306,590
168-02	City of Berkeley	Neighborhood Energy Awareness and Education Service	\$488,938	Information Only Program		
208-02	Energx Controls Inc	Local Small Commercial Energy Efficiency & Market Transformation Program	\$1,142,857			824,440
		TOTAL	\$6,662,303	3,033	202,934,063	5,131,030

¹ In cases where the proposed program budget was reduced, we have reduced the energy and demand reduction targets proportionately. All energy and demand reduction targets shown in this attachment are to illustrate the approximate energy effects of the program portfolio, and will be revised based on the Program Implementation Plans that program sponsors will submit.

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(END OF ATTACHMENT 1)

ATTACHMENT 2

Summary of Important Dates and Deadlines

Task	Date
Energy Division sends program implementation plan and quarterly reporting template and uniform cost allocation guidelines to program implementers	7-June-02
Implementation plans, finalized program budgets and evidence of customary licensing, bonding and insurance filed and served. Implementation plans posted on program implementers websites (if entity manages a website)	14-June-02
Review and approval of implementation plans	As soon as Plans are submitted
Contracts signed and programs commence	24-Jun-02 or as soon as Plans are approved
Q2 – 2002: Quarterly Report Covering Second Quarter of 2002 (Apr – Jun) Due to IOU contract administrator and CPUC	On or before 1-Aug-02
Q3 – 2002: Quarterly Report Covering Third Quarter of 2002 (Jul – Sep) Due	On or before 1-Nov-02
Q4 – 2002: Quarterly Report Covering Fourth Quarter of 2002 (Oct – Dec) Due	On or before 1-Feb-03
Q1 – 2003: Quarterly Report Covering First Quarter of 2003 (Jan – Mar) Due	On or before 1-May-03
Q2 – 2003: Quarterly Report Covering Second Quarter of 2003 (Apr – Jun) Due	On or before 1-Aug-03
Q3 – 2003: Quarterly Report Covering Third Quarter of 2003 (Jul – Sep) Due	On or before 1-Nov-03
Third party local program implementers to commit all funds for specific purposes	By 31-Dec-03
Q4 – 2003: Quarterly Report Covering Fourth Quarter of 2003 (Oct – Dec) Due	On or before 1-Feb-04
Third party local program implementers to complete all program activities including outstanding commitments	By 31-Mar-04
Final Reports and Program Evaluations Due	On or before 1-May-04
Final Payments issued to third party local programs	As soon as final program reports are deemed accepted

(END OF ATTACHMENT 2)

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See Attachment 3 in 123236

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ATTACHMENT 4
LOCAL PROGRAM PORTFOLIO MIX*

Local Program Mix by Delivery Structure, Geography and Rate-Class					
Delivery Structure	Incentive/Rebate¹		Information Programs¹		Both³
	\$61,054,565	(52.02%)	\$26,213,548	(22.33%)	\$30,100,903 (25.65%)
Geography³	Rural²		Urban²		Both³
	\$23,053,318	(19.64%)	\$29,282,919	(24.95%)	\$65,032,778 (55.41%)
Market Segments	Residential¹		Nonresidential¹		Crosscutting¹
	\$32,805,048	(27.95%)	\$59,003,990	(50.27%)	\$25,559,976 (21.78%)

1. As defined in the Energy Efficiency Policy Manual attached to D.01-11-066.
2. We define rural here as being those areas largely outside of the metropolitan areas of the San Francisco Bay Area, Sacramento, San Diego and the Los Angeles basin.
3. Programs that combine both features.

(END OF ATTACHMENT 4)

* Includes all local programs approved in D.02-05-046 and in this decision.

ATTACHMENT 5**LOCAL PROGRAMS NOT FUNDED**

Energy Division Proposal Reference Number	Proposal Sponsor	Program Title	Approved Budget	IOU Service Territory	Contracting IOU
142AB-02	Alliance to Save Energy	Green Schools, Green Communities <i>Program Budget Per IOU Area</i>	\$1,314,286 <i>\$438,095</i> <i>\$876,190</i>	<i>PGE</i> <i>SCE</i>	SCE
274-02	Efficiency Services Group	Energy and Water Saving Program for Residential Rental Properties in Targeted Local Communities in PGE Service Area	\$3,320,368	PGE	PGE
243ABC-02	EnSave Energy Performance Inc	California Variable Speed Drive Farm Program <i>Program Budget Per IOU Area</i>	\$484,977 <i>\$399,621</i> <i>\$71,291</i> <i>\$14,065</i>	<i>PGE</i> <i>SCE</i> <i>SDGE</i>	PGE
130-02	Geothermal Heat Pump Consortium	Proposal to Promote Geoexchange to SCE Customers	\$1,287,531	SCE	SCE
237ABC-02	PECI	Proposal for Delivering Energy Efficiency Services to Local Independent Grocery Sector <i>Program Budget Per IOU Area</i>	\$3,838,485 <i>\$1,830,957</i> <i>\$1,408,724</i> <i>\$598,804</i>	<i>PGE</i> <i>SCE</i> <i>SDGE</i>	SDGE
97A-02	SBW Consulting, Inc.	Compressed Air Management Program	\$1,569,524	PGE	PGE
197-02	SESCO, Inc.	The Gas-Only Multi-family Gas Program	\$2,380,952	SCG	SCG
Total			\$14,246,122		

(END OF ATTACHMENT 5)